

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA, ex rel. W.A.)
DREW EDMONDSON, in his capacity)
of ATTORNEY GENERAL OF THE)
STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,)
in his capacity as the TRUSTEE FOR)
NATURAL RESOURCES FOR THE)
STATE OF OKLAHOMA,)

Plaintiffs,)

vs.)

Case No. 05-CV-0329-JOE-SAJ

1. TYSON FOODS, INC.,)
2. TYSON POULTRY, INC.,)
3. TYSON CHICKEN, INC.,)
4. COBB-VANTRESS, INC.,)
5. AVAIGEN, INC.,)
6. CAL-MAINE FOODS, INC.,)
7. CAL-MAINE FARMS, INC.,)
8. CARGILL, INC.,)
9. CARGILL TURKEY)
PRODUCTION, LLC,)
10. GEORGE'S, INC.,)
11. GEORGE'S FARMS, INC.,)
12. PETERSON FARMS, INC.,)
13. SIMMONS FOODS, INC., and)
14. WILLOW BROOK FOODS, INC.,)

Defendants.)

**DEFENDANT, PETERSON FARMS, INC.'S
ANSWER TO FIRST AMENDED COMPLAINT**

Pursuant to Fed. R. Civ. P. 8 and 12, Defendant Peterson Farms, Inc. ("Peterson"), hereby answers Plaintiffs' First Amended Complaint (the "Complaint") filed on August 19, 2005.

ADMISSIONS AND DENIALS

Peterson responds to the allegations of the Complaint as follows:

As an initial matter, Peterson denies that this case is a “related case” to *City of Tulsa v. Tyson Foods, et al.*, 01-CV-0900-EA(C). This case involves different parties, claims, water bodies and a distinct geographic area from that at issue in the *City of Tulsa* case. Accordingly, Peterson asserts that the purported “related case” designation by Plaintiffs was improvidently asserted, and should be disregarded by the Court.

1. As to Paragraph No. 1 of the Complaint, Peterson admits that it owns poultry which is raised under contract by certain independent poultry farmers within the Illinois River Watershed, as Plaintiffs have defined this geographic area (the “IRW”); however, Peterson is without sufficient knowledge or information to admit or deny the purported numbers of poultry farms within the IRW, and therefore, it denies this allegation. Peterson admits that birds defecate, and therefore, poultry farms do generate “poultry litter,” which consists, in large measure, of the bedding material purchased and placed in the poultry houses by the poultry farmers, but which also contains spilled water, feed and poultry excrement. However, Peterson is without sufficient knowledge or information to admit or deny the purported volume of poultry litter generated within the IRW, but states that the independent farms in the IRW under contract with it to raise poultry generate but a small fraction of the litter produced from all poultry production. Peterson states that it manages only the poultry litter produced at its company-managed farms; however, Peterson does not have any company-managed farms within the IRW, and accordingly Peterson denies that it is legally responsible for any poultry litter generation, management, storage or disposal within the IRW, and denies that any of its activities have caused damage to the biota, lands, waters or sediments in the

IRW. Peterson admits that it has been the practice of some poultry farmers, as well as some farmers and ranchers of all types, to utilize poultry litter as a highly beneficial and cost effective fertilizer and soil conditioner for crops and forage. Furthermore, Peterson states that this agricultural practice has long been endorsed by the Land Grant Universities and specifically authorized by the Legislatures of Oklahoma and Arkansas and the United States Department of Agriculture, Natural Resources Conservation Service. Peterson denies the remaining allegations in the Paragraph.

2. As to Paragraph No. 2 of the Complaint, Peterson denies that this Court has proper subject matter jurisdiction. The remaining allegations of the Paragraph are denied to the extent they require a response.

3. Peterson denies the allegations of Paragraph No. 3 of the Complaint and asserts that venue is more properly had in the United States District Court for the Eastern District of Oklahoma, as a more substantial part of the property and conduct at issue lies within the District of that Court. 28 U.S.C. § 1391(b).

4. As to Paragraph No. 4 of the Complaint, Peterson admits that this Court has personal jurisdiction over it, but denies the remaining allegations.

5. As to Paragraph No. 5 of the Complaint, Peterson admits to the State of Oklahoma's sovereignty and interest in some of the waters and natural resources within the State; however, Peterson denies that the State has an interest in the waters and natural resources located within the IRW, which stands in derogation of the sovereign rights of certain Indian Tribes including, but not limited to, the Cherokee Nation. Peterson admits that the Oklahoma Attorney General is purporting to act in a representative capacity for the State of Oklahoma and its residents; however, Peterson denies that such representation is lawful or authorized by any Oklahoma statutory or constitutional

provisions or regulatory agency. Peterson admits that to the extent the State of Oklahoma has an interest in the natural resources within the IRW, the Oklahoma Secretary of the Environment is the duly appointed trustee.

6. As to Paragraph No. 6 of the Complaint, Peterson lacks sufficient knowledge or information to admit or deny the allegations, therefore it denies the allegations.

7. As to Paragraph No. 7 of the Complaint, Peterson lacks sufficient knowledge or information to admit or deny the allegations, therefore must deny the allegations.

8. As to Paragraph No. 8 of the Complaint, Peterson lacks sufficient knowledge or information to admit or deny the allegations, therefore it denies the allegations.

9. As to Paragraph No. 9 of the Complaint, Peterson lacks sufficient knowledge or information to admit or deny the allegations, therefore it denies the allegations.

10. As to Paragraph No. 10 of the Complaint, Peterson lacks sufficient knowledge or information to admit or deny the allegations, therefore it denies the allegations.

11. As to Paragraph No. 11 of the Complaint, Peterson lacks sufficient knowledge or information to admit or deny the allegations, therefore it denies the allegations.

12. As to Paragraph No. 12 of the Complaint, Peterson lacks sufficient knowledge or information to admit or deny the allegations, therefore it denies the allegations.

13. As to Paragraph No. 13 of the Complaint, Peterson lacks sufficient knowledge or information to admit or deny the allegations, therefore it denies the allegations.

14. As to Paragraph No. 14 of the Complaint, Peterson lacks sufficient knowledge or information to admit or deny the allegations, therefore it denies the allegations.

15. As to Paragraph No. 15 of the Complaint, Peterson lacks sufficient knowledge or information to admit or deny the allegations, therefore it denies the allegations.

16. As to Paragraph No. 16 of the Complaint, Peterson lacks sufficient knowledge or information to admit or deny the allegations, therefore it denies the allegations.

17. As to Paragraph No. 17 of the Complaint, Peterson admits the first sentence. Peterson also admits that it has contracts with independent farmers located within the IRW who raise poultry for Peterson. Peterson denies that its relationship with the independent poultry farmers is anything other than as integrator and independent contractor. Peterson denies that the contract poultry farmers have “disposed of” or in any other manner improperly handled their poultry litter, or that any injury has occurred as a result of the contract farmers’ litter management. Peterson denies the remaining allegations in the Paragraph.

18. As to Paragraph No. 18 of the Complaint, Peterson lacks sufficient knowledge or information to admit or deny the allegations, therefore it denies the allegations.

19. As to Paragraph No. 19 of the Complaint, Peterson lacks sufficient knowledge or information to admit or deny the allegations, therefore it denies the allegations.

20. As to Paragraph No. 20 of the Complaint, Plaintiffs can choose to label the Defendants as they see fit; however, Peterson denies that it can properly be collectively characterized as a “Poultry Integrator Defendant.” Peterson objects to Plaintiffs’ attempt to cast their allegations against Peterson through the use of such a collective, overly broad and imprecise label in an attempt to circumvent their obligation to specifically allege and prove each of their allegations as to Peterson individually. Therefore, Peterson responds to the allegations of Plaintiffs’

Complaint only as they relate to Peterson, and asserts that this objection and scope of response applies throughout the remainder of its Answer.

21. Paragraph No. 21 does not require a response.

22. As to Paragraph No. 22 of the Complaint, Peterson admits that for purposes of this action, the IRW is represented by the general map attached to the Complaint as Ex. “1;” however, Peterson is without sufficient knowledge or information to admit or deny the size of the purported IRW or whether the boundaries as set forth in the Exhibit accurately depict the geologic land form officially known as the Illinois River Watershed, therefore it denies these allegations.

23. As to Paragraph No. 23 of the Complaint, Peterson admits that the Illinois River and its tributaries are located within the IRW; however it lacks sufficient knowledge or information to admit or deny the remaining allegations, therefore it denies these allegations.

24. As to Paragraph No. 24 of the Complaint, the allegations include quoted text; however, the source of this quote is not identified. Accordingly, Peterson lacks sufficient knowledge or information to admit or deny the allegations, therefore it denies the allegations. Furthermore, Peterson denies the allegations to the extent they are inconsistent with the express provisions of the Oklahoma Scenic Rivers Act.

25. As to Paragraph No. 25 of the Complaint, Peterson states that the term “outstanding” is subjective and not defined, therefore Peterson denies the allegation. However, Peterson admits that the Illinois River, generally, is a valuable resource, which has and continues to offer recreational, fishing and wildlife propagation and aesthetic values.

26. As to Paragraph No. 26 of the Complaint, Peterson admits that the Illinois River flows into Tenkiller Ferry Lake. The allegations also include quoted text; however, the source of

this quote is not identified. Accordingly, Peterson lacks sufficient knowledge or information to admit or deny the allegations, therefore it denies the allegations.

27. Peterson admits the allegations of Paragraph 27 of the Complaint.

28. As to Paragraph No. 28 of the Complaint, Peterson admits that some portion of the waters of the IRW are being treated and utilized for public drinking water supply. However, Peterson lacks sufficient knowledge and information to admit or deny the allegations as to any future use of said waters, therefore, it denies the allegations.

29. As to Paragraph No. 29 of the Complaint, Peterson lacks sufficient knowledge or information to admit or deny the extent to which there is any pollution or degradation of the water resources within the IRW, or what, if any, sources are causing any such alleged injury, therefore it denies the allegations. Peterson does however specifically deny that it or the operations of any of the poultry farmers under contract with it are the source of any pollution or degradation.

30. Peterson denies the allegations of Paragraph 30 of the Complaint.

31. As to Paragraph No. 31 of the Complaint, to the extent the allegations are directed to Peterson, they are denied.

32. As to Paragraph No. 32 of the Complaint, to the extent that allegations are directed to Peterson, they are admitted. To the extent the allegations are directed to any other Defendant, Peterson is without sufficient knowledge or information to admit or deny the allegations, therefore the allegations are denied.

33. As to Paragraph No. 33 of the Complaint, to the extent the allegations are directed to Peterson, it admits that it is involved in the poultry growing process to the extent that it provides the contract farmers with birds and with recommendations and guidance to assist them in building

profitability by efficiently raising healthy poultry; however, each farm is owned and operated by an independent family farmer who makes his or her own decisions as to the specific aspects of the poultry husbandry operation. Peterson denies the remaining allegations of the Paragraph.

34. As to Paragraph No. 34 of the Complaint, to the extent the allegations are directed to Peterson, it admits that it raises poultry at company-managed farms; however, there are no such farms located within the IRW. Peterson admits that it contracts with independent farmers to raise poultry within the IRW.

35. As to Paragraph No. 35 of the Complaint, to the extent the allegations are directed to Peterson, they are denied. Peterson's contracts with the independent farmers are drafted and negotiated in the manner dictated by federal law.

36. As to Paragraph No. 36 of the Complaint, to the extent the allegations are directed to Peterson, they are admitted.

37. As to Paragraph No. 37 of the Complaint, to the extent the allegations are directed to Peterson, they are admitted.

38. As to Paragraph No. 38 of the Complaint, to the extent the allegations are directed to Peterson, they are admitted.

39. As to Paragraph No. 39 of the Complaint, to the extent the first sentence is directed to Peterson, it is admitted. Peterson also admits that poultry manure is influenced to some degree by the diet of the poultry; however, there are other factors affecting the constituents in poultry manure, which the Paragraph fails to mention.

40. As to Paragraph No. 40 of the Complaint, to the extent the allegations are directed to Peterson, it admits that it specifies the feed, feed supplements and medications supplied to its

poultry. However, Peterson denies that it “dictates” the manner in which the independent poultry farmer undertakes to raise the poultry while in his or her care and custody, and therefore denies the remaining allegations.

41. As to Paragraph No. 41 of the Complaint, to the extent the allegations are directed to Peterson, it admits that it employs service technicians, who periodically visit the contract farms to view the health of the poultry and provide technical guidance to the poultry farmer. However, Peterson denies the remaining allegations in the Paragraph.

42. As to Paragraph No. 42 of the Complaint, to the extent the allegations are directed to Peterson, except as admitted above in response to the foregoing allegations, Peterson denies the allegations.

43. As to Paragraph No. 43 of the Complaint, to the extent the allegations are directed to Peterson, except as admitted above in response to the foregoing allegations, Peterson denies the allegations.

44. As to Paragraph No. 44 of the Complaint, to the extent the allegations are directed to Peterson, they are denied.

45. As to Paragraph No. 45 of the Complaint, to the extent the allegations are directed to Peterson, they are denied.

46. As to Paragraph No. 46 of the Complaint, Peterson is without sufficient knowledge or information to admit or deny the allegations, therefore, it denies the allegations.

47. As to Paragraph No. 47 of the Complaint, to the extent the allegations are directed to Peterson, except as admitted above in response to the foregoing allegations, Peterson denies the allegations. Furthermore, Peterson states that the bulk of the poultry litter consists of the organic

matter purchased and placed in the poultry houses by the contract farmers to provide bedding for the poultry. Peterson neither owns nor has the legal right to control how the independent farmers elect to use, sell or trade his or her litter as an integral and vital part of their farming operations.

48. As to Paragraph No. 48 of the Complaint, to the extent the allegations are directed to Peterson, they are denied. Furthermore, the photograph attached to the Complaint as Ex. "2," is offered by Plaintiffs with no foundation whatsoever as to location, farm identity, date and circumstances. As such, this photograph cannot be deemed evidence of a wrongful activity, nor can it be considered relevant to any claims against Peterson.

49. As to Paragraph No. 49 of the Complaint, to the extent the allegations are directed to Peterson, they are denied. Furthermore, the photograph attached to the Complaint as Ex. "3," is offered by Plaintiffs with no foundation whatsoever as to location, farm identity, date and circumstances. As evidenced by the photograph itself, the truck is not owned or operated by Peterson, and therefore it cannot be deemed evidence of a wrongful activity, nor can it be considered relevant to any claims against Peterson.

50. As to Paragraph No. 50 of the Complaint, to the extent the allegations are directed to Peterson, they are denied. On the contrary, to Peterson's knowledge, the land application of poultry litter within the IRW is performed in compliance with "good agricultural practices" as recommended by Oklahoma State University, the Oklahoma Agricultural Extension Service, the University of Arkansas, the U.S.D.A. Natural Resources Conservation Service and Agricultural Research Service, and as required by the laws of Oklahoma and Arkansas. To the extent litter is utilized by third persons who acquire litter from poultry farmers in private transactions not involving

Peterson, Peterson is without sufficient knowledge or information to admit or deny whether their practices are consistent with “good agricultural practices” or not.

51. As to Paragraph No. 51 of the Complaint, to the extent the allegations are directed to Peterson, they are denied.

52. As to Paragraph No. 52 of the Complaint, to the extent the allegations are directed to Peterson, they are denied.

53. As to Paragraph No. 53 of the Complaint, to the extent the allegations are directed to Peterson, they are denied.

54. As to Paragraph No. 54 of the Complaint, to the extent the allegations are directed to Peterson, they are denied.

55. As to Paragraph No. 55 of the Complaint, to the extent the allegations are directed to Peterson, they are denied. Peterson additionally asserts that “it” does not own or control any poultry litter within the IRW, and incorporates this response in the balance of its responses in this Answer.

56. As to Paragraph No. 56 of the Complaint, to the extent the allegations are directed to Peterson, they are denied.

57. As to Paragraph No. 57 of the Complaint, to the extent the allegations are directed to Peterson, they are denied.

58. As to Paragraph No. 58 of the Complaint, to the extent the allegations are directed to Peterson, they are denied.

59. As to Paragraph No. 59 of the Complaint, the allegations fail to specify which constituents have been found at elevated levels or the specific location(s) where any such

constituents have been found (as it is apparent that not all of the listed constituents are elevated). As such, Peterson lacks sufficient knowledge or information to admit or deny the allegations, and therefore it denies the allegations.

60. As to Paragraph No. 60 of the Complaint, the allegations fail to specify which constituents have been found at elevated levels or the specific location(s) where any such constituents have been found (as it is apparent that not all of the listed constituents are elevated). As such, Peterson lacks sufficient knowledge or information to admit or deny the allegations, and therefore it denies the allegations. Peterson specifically denies that it has conducted any improper disposal of poultry litter and that it has caused any injury whatsoever.

61. As to Paragraph No. 61 of the Complaint, Peterson denies that the phosphorus and nitrogen compounds found within poultry litter are hazardous substances. On the contrary, these substances are ubiquitous in nature and are classified as nutrients, because they are both essential to and a natural byproduct of living organisms. Peterson admits that excessive levels of phosphates and nitrates can cause degradation of water resources; however, the accumulation of these compounds in water courses, particularly in man-made reservoirs results from many causes, including the inevitable eutrophication that ensues when the flow of a natural water course is stemmed by a dam. Additionally, Peterson specifically denies that any excess of these compounds in waters of the IRW is attributable to its operations or the operations of any contract poultry farmer, denies that any injury has in fact occurred in the IRW, and denies the remaining allegations of the Paragraph.

62. As to Paragraph No. 62 of the Complaint, Peterson lacks sufficient knowledge or information to admit or deny the allegations, and therefore it denies the allegations. Peterson notes,

however, that Plaintiffs do not allege that levels of any of the identified constituents have been identified at any location within the IRW sufficient to create an elevated risk to human health or the environment, nor do Plaintiffs allege that any such constituents identified in the waters of the IRW are traceable to any operation of Peterson or the contract poultry farmers.

63. As to Paragraph No. 63 of the Complaint, Peterson lacks sufficient knowledge or information to admit or deny the allegations, and therefore it denies the allegations. Peterson notes, however, that Plaintiffs do not allege that levels of any of the identified constituents have been identified at any location within the IRW sufficient to create an elevated risk to human health, the environment or biota, nor do Plaintiffs allege that any such constituents identified in the waters of the IRW are traceable to any operation of Peterson or the contract poultry farmers.

64. As to Paragraph No. 64 of the Complaint, Peterson lacks sufficient knowledge or information to admit or deny the allegations, and therefore it denies the allegations. Peterson notes, however, that Plaintiffs do not allege that levels of any of the identified constituents have been identified at any location within the IRW sufficient to create an elevated risk to human health, the environment or biota, nor do Plaintiffs allege that any such constituents identified in the waters of the IRW are traceable to any operation of Peterson or the contract poultry farmers.

65. As to Paragraph No. 65 of the Complaint, Peterson denies that it has made any such admission, and states that any public statements by any poultry company intended to convey proposals for voluntary action, above and beyond those required by law, are inadmissible for purposes of establishing liability. Furthermore, any such statement does not establish any element of any claim, nor does it relieve Plaintiffs' burden to prove each element of each cause of action they are asserting against Peterson.

66. As to Paragraph No. 66 of the Complaint, Peterson denies that it has made any such admission, and states that any public statements by any poultry company intended to convey proposals for voluntary action, above and beyond those required by law, are inadmissible for purposes of establishing liability. Furthermore, any such statement does not establish any element of any claim, nor does it relieve Plaintiffs' burden to prove each element of each cause of action they are asserting against Peterson.

67. As to Paragraph No. 67 of the Complaint, Peterson denies that it has made any such admission, and states that any public statements by any poultry company intended to convey proposals for voluntary action, above and beyond those required by law, are inadmissible for purposes of establishing liability. Furthermore, any such statement does not establish any element of any claim, nor does it relieve Plaintiffs' burden to prove each element of each cause of action they are asserting against Peterson.

68. As to Paragraph No. 68 of the Complaint, to the extent the allegations are directed to Peterson, they are denied. On the contrary, to Peterson's knowledge, the management of poultry litter within the IRW by the contract poultry farmers is consistent with the recommendations of Oklahoma State University, the Oklahoma Agricultural Extension Service, the University of Arkansas, the U.S.D.A. Natural Resources Conservation Service and Agricultural Research Service, and as required by the laws of Oklahoma and Arkansas. To the extent litter is utilized by third persons who acquire litter from poultry farmers in private transactions not involving Peterson, Peterson is without sufficient knowledge or information to admit or deny whether their practices are consistent with "good agricultural practices" or not.

69. As to Paragraph No. 69, to the extent the allegations are directed to Peterson, they are denied. Furthermore, Peterson denies that the State “has been forced to bring this lawsuit,” as no state agency with regulatory authority over the poultry industry has found Peterson or any contract poultry farmer in violation of the State’s laws, nor has any such agency authorized or requested the Attorney General or the Secretary of Environment to initiate this litigation.

70. In response to Paragraph No. 70 of the Complaint, Peterson incorporates its responses to the foregoing Paragraphs.

71. As to Paragraph No. 71 of the Complaint, to the extent the allegations are directed to Peterson, they are denied. Furthermore, Peterson asserts that neither poultry litter nor the constituents therein are hazardous substances, nor are they within the jurisdiction of CERCLA.

72. As to Paragraph No. 72 of the Complaint, to the extent the allegations are directed to Peterson, they are denied. In addition to denying that poultry litter and the constituents therein are within the jurisdiction of CERCLA, Peterson denies that every parcel of public and privately owned land within the IRW can legally or technically be characterized as a “Superfund Site” within the meaning of CERCLA.

73. As to Paragraph No. 73 of the Complaint, to the extent the allegations are directed to Peterson, they are admitted.

74. As to Paragraph No. 74 of the Complaint, to the extent the allegations are directed to Peterson, they are denied.

75. As to Paragraph No. 75 of the Complaint, to the extent the allegations are directed to Peterson, they are denied. Furthermore, Peterson denies that it “owns” or “operates” any facility within the IRW.

76. As to Paragraph No. 76 of the Complaint, Peterson denies that there is or has been any release or threatened release of any “hazardous substance” from any operation for which Peterson can be held liable, and further, Peterson denies that the Plaintiffs have or will incur any response costs consistent with the NCP. Peterson denies all remaining allegations of the Paragraph.

77. As to Paragraph No. 77 of the Complaint, to the extent the allegations are directed to Peterson, they are denied. Furthermore, Peterson asserts that if CERLA does apply to this action, then the State of Oklahoma is also a potentially responsible party as a result of its conduct with regard to the IRW, and therefore, Peterson’s share of liability, if any, is several.

78. In response to Paragraph No. 78 of the Complaint, Peterson incorporates its responses to the foregoing Paragraphs.

79. Peterson admits the allegations of Paragraph No. 79 of the Complaint to the extent they are consistent with the express provisions of the Oklahoma Statutes and CERCLA, otherwise, they are denied.

80. As to Paragraph No. 80 of the Complaint, to the extent the allegations are directed to Peterson, they are denied.

81. As to Paragraph No. 81 of the Complaint, to the extent the allegations are directed to Peterson, they are denied. In addition to denying that poultry litter is within the jurisdiction of CERCLA, Peterson denies that every parcel of public and privately owned land within the IRW can legally or technically be characterized as a “Superfund Site” within the meaning of CERCLA.

82. As to Paragraph No. 82 of the Complaint, to the extent the allegations are directed to Peterson, they are admitted.

83. As to Paragraph No. 83 of the Complaint, to the extent the allegations are directed to Peterson, they are denied.

84. As to Paragraph No. 84 of the Complaint, to the extent the allegations are directed to Peterson, they are denied. Furthermore, Peterson denies that it “owns” or “operates” any facility within the IRW.

85. As to Paragraph No. 85 of the Complaint, to the extent the allegations are directed to Peterson, they are denied. Furthermore, Peterson denies that there exists any injury to the natural resources in the IRW, and states that if any such injury exists, it is not attributable to Peterson.

86. As to Paragraph No. 86 of the Complaint, to the extent the allegations are directed to Peterson, they are denied.

87. As to Paragraph No. 87 of the Complaint, to the extent the allegations are directed to Peterson, they are denied. Furthermore, Peterson denies that the State has an interest in the waters and natural resources located within the IRW, which stands in derogation of the sovereign rights of certain Indian Tribes including, but not limited to, the Cherokee Nation.

88. The allegations of Paragraph No. 88 of the Complaint are denied.

89. As to Paragraph No. 89 of the Complaint, to the extent the allegations are directed to Peterson, they are denied. Furthermore, Peterson asserts that if CERLA does apply to this action, then the State of Oklahoma is also a potentially responsible party as a result of its conduct with regard to the IRW, and therefore, Peterson’s share of liability, if any, is several.

90. In response to Paragraph No. 90 of the Complaint, Peterson incorporates its responses to the foregoing Paragraphs.

91. As to Paragraph No. 91, Peterson admits that it received the purported Notice, but denies that it was in compliance with the SWDA, and denies that the State of Oklahoma can bring a claim under SWDA's Citizen Suit provision.

92. Peterson denies the allegations of Paragraph No. 92 of the Complaint. On the contrary, animal wastes are specifically excluded from the application of SWDA.

93. As to Paragraph No. 93 of the Complaint, to the extent the allegations are directed to Peterson, they are denied. Furthermore, Peterson denies that it "owns" or "operates" any facility or that it "generates" any "waste" within the IRW.

94. As to Paragraph No. 94 of the Complaint, to the extent the allegations are directed to Peterson, they are denied.

95. As to Paragraph No. 95 of the Complaint, to the extent the allegations are directed to Peterson, they are denied. Furthermore, Peterson denies the allegation that there exists an "imminent and substantial endangerment to health or the environment" with respect to the environment and conditions of the Illinois River, its tributaries, Tenkiller Ferry Lake or the IRW.

96. As to Paragraph No. 96 of the Complaint, to the extent the allegations are directed to Peterson, they are denied. Peterson asserts that the Plaintiffs are not entitled to recover any relief from it whatsoever, and furthermore, if an injunction were to be entered against Peterson, it would have no effect on the operations of the independent contract poultry farmers, who are not parties before this Court.

97. As to Paragraph No. 97 of the Complaint, to the extent the allegations are directed to Peterson, they are denied.

98. In response to Paragraph No. 98 of the Complaint, Peterson incorporates its responses to the foregoing Paragraphs.

99. As to Paragraph No. 99 of the Complaint, to the extent the allegations are directed to Peterson, they are denied. Furthermore, Peterson denies that the State has an interest in the waters and natural resources located within the IRW, which stands in derogation of the sovereign rights of certain Indian Tribes including, but not limited to, the Cherokee Nation.

100. As to Paragraph No. 100 of the Complaint, to the extent the allegations are directed to Peterson, they are denied. Furthermore, Peterson denies the allegation that there exists a “substantial danger to the public’s health and safety” with respect to the environment, waters of the Illinois River, its tributaries, Tenkiller Ferry Lake or the IRW.

101. As to Paragraph No. 101 of the Complaint, to the extent the allegations are directed to Peterson, they are denied. Further, Peterson states that the land application of poultry litter is a agricultural practice sanctioned by the federal government and the Legislatures of Oklahoma and Arkansas, and therefore, it cannot constitute a nuisance.

102. As to Paragraph No. 102 of the Complaint, to the extent the allegations are directed to Peterson, they are denied.

103. As to Paragraph No. 103 of the Complaint, to the extent the allegations are directed to Peterson, they are denied. Further, Peterson states that the alleged conduct cannot constitute a nuisance *per se* under the cited statute section, because the Executive Director of the Oklahoma Department of Environmental Quality has not deemed it as such per the statute’s mandate.

104. As to Paragraph 104 of the Complaint, Peterson admits that poultry operations in Oklahoma are subject to the jurisdiction of the Oklahoma Department of Agriculture, Food and

Forestry. Accordingly, because the Board of Agriculture has not deemed the conduct at issue a nuisance *per se*, as required by the cited statute section, the remaining allegations are denied.

105. As to Paragraph No. 105 of the Complaint, to the extent the allegations are directed to Peterson, they are denied. Peterson asserts that the Plaintiffs are not entitled to recover any relief from it whatsoever, and furthermore, if an injunction were to be entered against Peterson, it would have no effect on the operations of the independent contract poultry farmers, who are not parties before this Court.

106. As to Paragraph No. 106 of the Complaint, to the extent the allegations are directed to Peterson, they are denied. Further, by virtue of the Plaintiffs' conduct with regard to the IRW, it is a party responsible, at least in part, for the alleged injuries; therefore, Peterson's liability, if any, is several.

107. As to Paragraph No. 107 of the Complaint, to the extent the allegations are directed to Peterson, they are denied. Further, Peterson states that since the land application of poultry litter in the IRW by the contract poultry farmers was and is consistent with the recommendations of Oklahoma State University, the Oklahoma Agricultural Extension Service, the University of Arkansas, the U.S.D.A. Natural Resources Conservation Service and Agricultural Research Service, and as required by the laws of Oklahoma and Arkansas, it cannot be deemed "reckless," "intentionally indifferent," or "in disregard of the public's health and safety."

108. As to Paragraph No. 108 of the Complaint, to the extent the allegations are directed to Peterson, they are denied.

109. In response to Paragraph No. 109 of the Complaint, Peterson incorporates its responses to the foregoing Paragraphs.

110. As to Paragraph No. 110 of the Complaint, to the extent the allegations are directed to Peterson, they are denied. Furthermore, Peterson denies that the State has an interest in the waters and natural resources located within the IRW, which stands in derogation of the sovereign rights of certain Indian Tribes including, but not limited to, the Cherokee Nation.

111. As to Paragraph No. 111 of the Complaint, to the extent the allegations are directed to Peterson, they are denied.

112. As to Paragraph No. 112 of the Complaint, to the extent the allegations are directed to Peterson, they are denied. Furthermore, Peterson denies the allegation that there exists a “substantial danger to the public’s health and safety” with respect to the environment, waters of the Illinois River, its tributaries, Tenkiller Ferry Lake or the IRW.

113. As to Paragraph No. 113 of the Complaint, to the extent the allegations are directed to Peterson, they are denied.

114. As to Paragraph No. 114 of the Complaint, to the extent the allegations are directed to Peterson, they are denied. Further, Peterson asserts that due to the fact that Plaintiffs’ claims rely on allegations of interstate water pollution, they cannot maintain a claim for federal common-law nuisance.

115. As to Paragraph No. 115 of the Complaint, to the extent the allegations are directed to Peterson, they are denied.

116. As to Paragraph No. 116 of the Complaint, to the extent the allegations are directed to Peterson, they are denied. Peterson asserts that the Plaintiffs are not entitled to recover any relief from it whatsoever, and furthermore, if an injunction were to be entered against Peterson, it would

have no effect on the operations of the independent contract poultry farmers, who are not parties before this Court.

117. As to Paragraph No. 117 of the Complaint, to the extent the allegations are directed to Peterson, they are denied. Further, by virtue of the Plaintiffs' conduct with regard to the IRW, it is a party responsible, at least in part, for the alleged injuries; therefore, Peterson's liability, if any, is several.

118. As to Paragraph No. 118 of the Complaint, to the extent the allegations are directed to Peterson, they are denied. Further, Peterson states that since the land application of poultry litter in the IRW by the contract poultry farmers was and is consistent with the recommendations of Oklahoma State University, the Oklahoma Agricultural Extension Service, the University of Arkansas, the U.S.D.A. Natural Resources Conservation Service and Agricultural Research Service, and as required by the laws of Oklahoma and Arkansas, it cannot be deemed "reckless," "intentionally indifferent," or "in disregard of the public's health and safety."

119. In response to Paragraph No. 119 of the Complaint, Peterson incorporates its responses to the foregoing Paragraphs.

120. As to Paragraph No. 120 of the Complaint, to the extent the allegations are directed to Peterson, they are denied. Furthermore, Peterson denies that the State has an interest in the waters and natural resources located within the IRW, which stands in derogation of the sovereign rights of certain Indian Tribes including, but not limited to, the Cherokee Nation.

121. As to Paragraph No. 121 of the Complaint, to the extent the allegations are directed to Peterson, they are denied.

122. As to Paragraph No. 122 of the Complaint, to the extent the allegations are directed to Peterson, they are denied. Further, Peterson asserts that by virtue of the laws and regulations passed under the authority of the Oklahoma Legislature specifically authorizing the land application of poultry litter in the IRW, and the regulatory oversight undertaken by the Oklahoma Department of Agriculture, Food and Forestry pursuant thereto, the State of Oklahoma has in fact consented to the conduct about which it now complains.

123. As to Paragraph No. 123 of the Complaint, to the extent the allegations are directed to Peterson, they are denied.

124. As to Paragraph No. 124 of the Complaint, to the extent the allegations are directed to Peterson, they are denied. Peterson asserts that the Plaintiffs are not entitled to recover any relief from it whatsoever, and furthermore, if an injunction were to be entered against Peterson, it would have no effect on the operations of the independent contract poultry farmers, who are not parties before this Court.

125. As to Paragraph No. 125 of the Complaint, to the extent the allegations are directed to Peterson, they are denied. Further, by virtue of the Plaintiffs' conduct with regard to the IRW, it is a party responsible, at least in part, for the alleged injuries; therefore, Peterson's liability, if any, is several.

126. As to Paragraph No. 126 of the Complaint, to the extent the allegations are directed to Peterson, they are denied. Further, Peterson states that since the land application of poultry litter in the IRW by the contract poultry farmers was and is consistent with the recommendations of Oklahoma State University, the Oklahoma Agricultural Extension Service, the University of Arkansas, the U.S.D.A. Natural Resources Conservation Service and Agricultural Research Service,

and as required by the laws of Oklahoma and Arkansas, it cannot be deemed “reckless,” “intentionally indifferent,” or “in disregard of the public’s health and safety.”

127. As to Paragraph No. 127 of the Complaint, to the extent the allegations are directed to Peterson, they are denied.

128. In response to Paragraph No. 128 of the Complaint, Peterson incorporates its responses to the foregoing Paragraphs.

129. As to Paragraph No. 129 of the Complaint, to the extent the allegations are directed to Peterson, they are denied. Further, Peterson states that the alleged conduct cannot constitute “pollution” under the cited statute section, because the Director of the Oklahoma Department of Environmental Quality has not deemed it as such per the statute’s mandate.

130. As to Paragraph No. 130 of the Complaint, to the extent the allegations are directed to Peterson, they are denied. Further, Peterson states that the alleged conduct cannot constitute a nuisance *per se* under the cited statute section, because the Executive Director of the Oklahoma Department of Environmental Quality has not deemed it as such per the statute’s mandate.

131. As to Paragraph 131 of the Complaint, Peterson admits that poultry operations in Oklahoma are subject to the jurisdiction of the Oklahoma Department of Agriculture, Food and Forestry. Accordingly, because the Board of Agriculture has not found that “pollution” has resulted from the conduct at issue as required by the cited statute section, the remaining allegations are denied.

132. As to Paragraph No. 132 of the Complaint, to the extent the allegations are directed to Peterson, they are denied. Further, Peterson asserts that the ability to assess civil penalties under the cited statute sections has been place within the sole and exclusive jurisdiction of the Executive

Director of the Oklahoma Department of Environmental Quality and the State Agriculture Board, and therefore, Peterson denies that the Plaintiffs' have the delegated authority to pursue these claims. Additionally, claims under the cited statutes cannot be asserted against poultry operations located entirely within the sovereign State of Arkansas.

133. In response to Paragraph No. 133 of the Complaint, Peterson incorporates its responses to the foregoing Paragraphs.

134. As to Paragraph No. 134 of the Complaint, to the extent the allegations are directed to Peterson, they are denied. Peterson asserts that these provisions of Oklahoma law have no applicability to poultry operations located outside the borders of the State of Oklahoma, and further, any finding of a violation of the laws cited in this Paragraph has been delegated by the Oklahoma Legislature solely to the Oklahoma Agricultural Board, and therefore, the Court does not have jurisdiction to consider this claim.

135. As to Paragraph No. 135 of the Complaint, to the extent the allegations are directed to Peterson, they are denied. Peterson asserts that these provisions of Oklahoma law have no applicability to poultry operations located outside the borders of the State of Oklahoma, and further, any finding of a violation of the laws cited in this Paragraph has been delegated by the Oklahoma Legislature solely to the Oklahoma Agricultural Board, and therefore, the Court does not have jurisdiction to consider this claim.

136. As to Paragraph No. 136 of the Complaint, to the extent the allegations are directed to Peterson, they are denied. Peterson asserts that these provisions of Oklahoma law have no applicability to poultry operations located outside the borders of the State of Oklahoma, and further, any finding of a violation of or the assessment of any penalties under the laws cited in this Paragraph

has been delegated by the Oklahoma Legislature solely to the Oklahoma Agricultural Board, and therefore, the Court does not have jurisdiction to consider this claim.

137. In response to Paragraph No. 137 of the Complaint, Peterson incorporates its responses to the foregoing Paragraphs.

138. As to Paragraph No. 138 of the Complaint, to the extent the allegations are directed to Peterson, they are denied. Furthermore, Peterson asserts that the independent farms with which it contracts within the IRW do not constitute Confined Animal Feeding Operations, and therefore, this Paragraph and the cited statute and regulation have no applicability to Peterson.

139. As to Paragraph No. 139 of the Complaint, to the extent the allegations are directed to Peterson, they are denied. Furthermore, Peterson asserts that the independent farms with which it contracts within the IRW do not constitute Confined Animal Feeding Operations, and therefore, this Paragraph and the cited statute and regulation have no applicability to Peterson.

140. In response to Paragraph No. 140 of the Complaint, Peterson incorporates its responses to the foregoing Paragraphs.

141. As to Paragraph No. 141 of the Complaint, to the extent the allegations are directed to Peterson, they are denied.

142. As to Paragraph No. 142 of the Complaint, to the extent the allegations are directed to Peterson, they are denied. Furthermore, Peterson asserts that it has not disposed of any “poultry waste” within the IRW.

143. As to Paragraph No. 143 of the Complaint, to the extent the allegations are directed to Peterson, they are denied. Further, Peterson asserts that the State of Oklahoma has not incurred any “costs” as a result of any act or omission of Peterson.

144. As to Paragraph No. 144 of the Complaint, to the extent the allegations are directed to Peterson, they are denied.

145. As to Paragraph No. 145 of the Complaint, to the extent the allegations are directed to Peterson, they are denied.

146. As to Paragraph No. 146 of the Complaint, to the extent the allegations are directed to Peterson, they are denied.

147. As to Paragraph No. 147 of the Complaint, to the extent the allegations are directed to Peterson, they are denied.

148. As to Plaintiffs' Prayer for Relief, including subparagraph nos. 1 through 9, Peterson denies that the Plaintiffs are entitled to recover any relief from it whatsoever.

149. As to Plaintiffs' demand for jury trial, Peterson denies that the Plaintiffs, as purported representatives of the sovereign, are entitled to a trial by jury.

150. Unless specifically admitted herein, Peterson denies all remaining allegations of the Complaint.

AFFIRMATIVE AND OTHER DEFENSES

Pursuant to Fed. R. Civ. P. 8 and 12, Peterson sets forth the following affirmative defenses and other defenses.

1. Plaintiffs' Complaint, in whole, or in part, fails to state a claim for relief against Peterson.
2. Counts 4 through 10 of Plaintiffs' Complaint should be dismissed for failure to state a claim for which relief can be granted, because said claims invade the sovereignty of the State of Arkansas.

3. Counts 4 through 10 of Plaintiffs' Complaint should be dismissed for failure to state a claim for which relief can be granted, because said claims violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution.
4. Counts 4 through 10 of Plaintiffs' Complaint should be dismissed for failure to state a claim for which relief can be granted, because said claims violate the Dormant Commerce Clause of the United States Constitution.
5. Counts 4, 5, 6 and 10 of Plaintiffs' Complaint should be dismissed for failure to state a claim for which relief can be granted, because said claims are preempted by the federal Clean Water Act.
6. Plaintiffs' Complaint should be dismissed for failure to state a claim for which relief can be granted, because it violates the Arkansas River Basin Compact.
7. Plaintiffs' claims for nuisance *per se* should be dismissed for failure to state a claim for which relief can be granted, because the land application of poultry litter within the IRW is specifically authorized by the statutes and regulations of Oklahoma and Arkansas.
8. Counts 1, 2 and 3 of Plaintiffs' Complaint should be dismissed for failure to state a claim for which relief can be granted, because poultry litter does not fall within the statutory or regulatory definition of a "hazardous substance" or "hazardous waste."
9. Plaintiffs' claims for violations of the Oklahoma Agricultural Code and the regulations issued pursuant thereto should be dismissed for failure to state a claim for which relief can be granted, because the Oklahoma Department of Agriculture,

Food and Forestry has the sole delegated authority to find violations of said laws and to assess any penalties pursuant thereto.

10. Plaintiffs' claims for violations of the Oklahoma Environmental Quality Act and the regulations issued pursuant thereto should be dismissed for failure to state a claim for which relief can be granted, because the Oklahoma Department of Environmental Quality has the sole delegated authority to find violations of said laws and to assess any penalties pursuant thereto.
11. Plaintiffs' Complaint should be dismissed for failure to join one or more indispensable parties.
12. Plaintiffs' claims are barred to the extent they rely on the retroactive application of any statute, regulation or standard of conduct.
13. Plaintiffs' Complaint should be dismissed for failure to state a claim for which relief can be granted, because the State of Oklahoma lacks sufficient standing and/or interest in the waters and natural resources located within the IRW.
14. While continuing to deny the material allegations of the Complaint, the Plaintiffs' claims are barred to the extent they are predicated upon conditions located on private lands, within privately owned waters, on federal lands or any condition located within Indian Country.
15. Plaintiffs' Complaint should be dismissed, in whole or in part, because the Attorney General of the State of Oklahoma lacks the constitutional or statutory authority to bring one or more of the purported claims on behalf of the State of Oklahoma.

16. Count 9 of Plaintiffs' Complaint should be dismissed as neither Peterson nor the independent farmers with whom it contracts operate any Confined Animal Feeding Operation as that term is defined under federal and Oklahoma law.
17. Counts 1 and 2 of the Complaint should be dismissed due to Plaintiffs' failure to identify and describe any specific lands it asserts is a "facility" within the meaning of CERCLA.
18. Counts 1 and 2 of the Complaint should be dismissed as Peterson does not direct, manage, control or operate any poultry operation within the IRW, particularly with regard to the land application of poultry litter or decisions regarding environmental compliance.
19. While continuing to deny the material allegations of the Complaint, Peterson asserts that Count 3 of Plaintiffs' Complaint should be dismissed, because Plaintiffs' knowledge of the alleged conditions in the IRW has continued for such a period of time as to eliminate the existence of any "imminent and substantial endangerment" as a matter of law.
20. Count 3 of Plaintiffs' Complaint should be dismissed for failure to state a claim for which relief can be granted, because the State of Oklahoma is precluded from bringing suit under the Citizen Suit provision of the SWDA by virtue of the State's delegated regulatory and enforcement program.
21. Count 3 of Plaintiffs' Complaint should be dismissed due to the inadequacy of notice.

22. Counts 1, 2 and 3 of the Complaint should be dismissed as poultry litter is a useful product, not waste or discarded material.
23. Counts 1, 2 and 3 of the Complaint should be dismissed pursuant to the applicable agricultural fertilizer exceptions.
24. Count 2 of Plaintiffs' Complaint should be dismissed due to Plaintiffs' inability to prove that any natural resource damage was caused by any release or discharge of a hazardous substance for which Peterson can be held liable.
25. Counts 1 and 2 of Plaintiffs' Complaint should be dismissed, in whole or in part, due to Plaintiffs' inability to prove the existence of a release, threatened release, or natural resource damage resulting from each and every one of the constituents about which they complain.
26. While continuing to deny the material allegations of the Complaint, Peterson asserts that Counts 1 and 2 of Plaintiffs' Complaint should be dismissed due to Plaintiffs' inability to prove that the release of an alleged hazardous substance from a Peterson operation would have caused the alleged natural resource damages apart from the alleged operations of the other Defendants.
27. While continuing to deny the material allegations of the Complaint, any contribution of the alleged constituents by Peterson into the IRW, which is denied, is *de minimis*, and therefore Peterson's share of liability, if any, is minimal.
28. Count 2 of the Complaint should be dismissed due to Plaintiffs' failure to perform a natural resource damage assessment pursuant to the applicable federal regulations.

29. Count 2 of the Complaint should be dismissed, because the “natural resource damages” alleged by Plaintiffs are the result of natural processes and the normal and expected effects of society upon the watershed in which it thrives.
30. Count 10 of the Complaint should be dismissed for failure to state a claim for which relief can be granted, because Plaintiffs have failed to allege that they have performed any duty that was the duty of Peterson to perform.
31. This Court lacks subject matter jurisdiction, and therefore, Plaintiffs’ claims are barred, in whole or in part, due to their failure to exhaust administrative remedies.
32. Plaintiffs’ claims are barred, in whole or in part, pursuant to the Political Question doctrine.
33. Plaintiffs’ claims are barred, in whole or in part, due to Plaintiffs’ failure to identify any specific act, omission or release on the part of Peterson for which Plaintiffs seek to hold Peterson liable.
34. Plaintiffs’ claims are barred, in whole or in part, by the applicable statutes of limitation, statutes of repose and the equitable doctrine of laches.
35. Plaintiffs’ claims are barred under the doctrines of estoppel, waiver and consent by virtue of the State of Oklahoma’s legislative enactments, which expressly authorize, allow and direct the manner in which poultry litter may be land applied within the IRW.
36. Plaintiffs’ claims are barred under the doctrines of estoppel, waiver and consent by virtue of the State of Oklahoma’s regulatory oversight of the land application of poultry litter in the IRW, coupled with the State of Oklahoma’s failure to advise

Peterson or any independent poultry farmer with whom it contracts that any of their conduct had, is or will result in any natural resource injury whatsoever.

37. Plaintiffs' claims are barred until such time as Total Maximum Daily Loads have been established for each constituent alleged, and for each water body alleged, as required by the federal Clean Water Act.
38. The Complaint fails to state any facts to support any claim that any act or omission of Peterson directly and proximately resulted in any injury for which Plaintiffs can recover.
39. While continuing to deny the material allegations of the Complaint, Peterson states that Plaintiffs' claims are barred, in whole or in part, by their own conduct that contributed to the injuries they claim.
40. While continuing to deny the material allegations of the Complaint, Peterson states that Plaintiffs' claims are barred, in whole or in part, by their unclean hands and the doctrine of *in pari delicto*.
41. Plaintiffs' injuries, if any, are the result of intervening and/or superceding causes.
42. While continuing to deny the material allegations of the Complaint, Peterson states that Plaintiffs' claims are barred, in whole or in part, by their failure to mitigate their alleged damages.
43. While continuing to deny the material allegations of the Complaint, Peterson states that its conduct must be adjudged solely according to the standards set forth in the statutes and regulations of the states of Oklahoma and Arkansas that occupy the field by regulating the management of poultry litter within the IRW.

44. Plaintiffs' claims are barred, in whole or in part, because the statutes and/or regulations upon which Plaintiffs' rely are unconstitutionally void as vague and violative of Peterson's right to due process.
45. The damages of which Plaintiffs complain, if any, are the result of acts or omissions of individuals or entities over which Peterson has or had no control and for which Peterson has no responsibility.
46. Plaintiffs' claims for injunctive relief should be dismissed for their failure to join as parties other potential contributors to the harm they allege, and therefore, any relief attempted without the participation of these third parties will be futile.
47. Plaintiffs' claims for injunctive relief should be dismissed, because the relief sought would force a reformation of the contracts between Peterson and the contract farmers without the farmers being present to protect their rights.
48. Plaintiffs' claims for injunctive relief should be dismissed, because Peterson lacks the legal right to control the land farming and management activities of the contract poultry farmers.
49. Plaintiffs' common-law claims of master-servant relationship between Peterson and the contract farmers are preempted by the Packers and Stockyards Act, 7 U.S.C. § 181, *et seq.* and the Agricultural Fair Practices Act, 7 U.S.C. § 2302, *et seq.*
50. Plaintiffs' claims for joint and several liability should be dismissed by virtue of Plaintiffs' conduct, which results and resulted in the release of most, if not all, of the constituents alleged against Peterson.

51. Peterson, at all times relevant to Plaintiffs' claims acted responsibly, in good faith, and with the skill, prudence, and diligence exercised by reasonably prudent operators in the poultry industry.
52. Peterson has conducted all of its operations and activities in accordance with industry standards, government requirements, and the prevailing state of the art and technology in the poultry industry.
53. Plaintiffs cannot state a claim against Peterson predicated on the land application of poultry litter as Peterson does not own, control, or land apply poultry litter within the IRW.
54. While continuing to deny the material allegations of the Complaint, Peterson states that the act of applying poultry litter to fields and pastures by independent poultry farmers is not a necessary or foreseeable element of poultry husbandry; rather, the decision by a landowner to apply poultry litter on his or her lands is an element of land management, ranching and/or farming.
55. Plaintiffs' claims are barred, in whole or in part, by the agricultural operations exceptions set forth in 50 O.S. § 1.1 and Ark. Code Ann. § 2-4-101 *et seq.*
56. While continuing to deny the material allegations of the Complaint, Peterson states that it cannot be held liable for the land application of poultry litter by those third parties, who through a private transaction with poultry farmers, acquire poultry litter for their own use according to their own terms.
57. The Complaint should be dismissed for failure to state a claim for which relief can be granted, because the land application of organic fertilizer (including poultry litter)

is a long-standing, well recognized and beneficial practice that is specifically authorized by the laws of Oklahoma and Arkansas.

58. Plaintiffs' claims are barred by their inability to prove that they suffered any harm caused by any toxic, hazardous or harmful substance that was released or emanated from any Peterson operation.
59. Plaintiffs' Complaint should be dismissed, in whole or in part, due to Plaintiffs' attempt to recover multiple remedies for the same alleged injury.
60. While continuing to deny the material allegations of the Complaint, Peterson states that Plaintiffs' claim for attorney's fees should be dismissed, as damages awarded for natural resource injuries cannot be utilized for the payment of attorney's fees.
61. Plaintiffs' claim for pre-judgment interest should be dismissed for failure to state a claim upon which relief can be granted, because the amount of damages, if any, was not readily ascertainable at the time Plaintiffs' lawsuit was commenced.
62. Without waiving its other substantive defenses, Peterson asserts that Plaintiffs' Complaint should be dismissed, or in the alternative, the action stayed pursuant to the Doctrine of Primary Jurisdiction in order to allow the Oklahoma Department of Agriculture, Food and Forestry, and the other Oklahoma environmental agencies to fulfill their statutorily delegated duties pursuant to federal and Oklahoma law.
63. Peterson asserts that any award of punitive damages against Peterson would be unconstitutional as violative of the Double Jeopardy Clause of the Fifth Amendment, U.S. Const. Amend. V, the Excessive Fines Clause of the Eighth Amendment, U.S.

Const. Amend. VIII, the Due Process Clause of the Fourteenth Amendment, U.S.

Const. Amend. XIV, and the Constitutions of the States of Oklahoma and Arkansas.

64. Plaintiffs' claim for exemplary damages is barred, in whole or in part, by the guidelines of *BMW of North America v. Gore*, 517 U.S. 559 (1996) and its progeny.

65. Peterson hereby adopts and incorporates by reference any other statement of defense asserted by any other Defendant in this action.

Peterson reserves the right to Amend its Answer as discovery progresses to assert additional defenses, cross-claims, counterclaims and third-party claims.

WHEREFORE, having answered Plaintiffs' First Amended Complaint, Peterson prays the Court enter judgment on its behalf on all of Plaintiffs' claims, and award it the reasonable attorney's fees and costs incurred in its defense, together with any other relief the Court deems just and appropriate.

Respectfully submitted,

By s/ A. Scott McDaniel

A. Scott McDaniel (Okla. Bar No. 16460) smcdaniel@jpm-law.com

Chris A. Paul (Okla. Bar No. 14416)

Nicole M. Longwell (Okla. Bar No. 18771)

Philip D. Hixon (Okla. Bar No. 19121)

Martin A. Brown (Okla. Bar No. 18660)

JOYCE, PAUL & McDANIEL, P.C.

1717 South Boulder Ave., Suite 200

Tulsa, Oklahoma 74119

(918) 599-0700

**COUNSEL FOR DEFENDANT
PETERSON FARMS, INC.**

CERTIFICATE OF SERVICE

I certify that on the 3rd day of October 2005, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

W. A. Drew Edmondson
Attorney General
State of Oklahoma
2300 North Lincoln Blvd., Suite 112
Oklahoma City, OK 73105
and

Douglas Allen Wilson
Melvin David Riggs
Richard T. Garren
Sharon K. Weaver
Riggs Abney Neal Turpen Orbison & Lewis
502 West 6th Street
Tulsa, OK 74119-1010
and

J. Randall Miller
David P. Page
Louis W. Bullock
Miller Keffer & Bullock
222 S. Kenosha
Tulsa, OK 74120-2421
and

Robert Allen Nance
Dorothy Sharon Gentry
Riggs Abney
5801 N. Broadway, Suite 101
Oklahoma City, OK 73118

COUNSEL FOR PLAINTIFFS

Stephen L. Jantzen
Patrick M. Ryan
Ryan, Whaley & Coldiron, P.C.
119 N. Robinson
900 Robinson Renaissance
Oklahoma City, OK 73102
**COUNSEL FOR TYSON FOODS, INC., TYSON
POULTRY, INC., TYSON CHICKEN, INC.; AND
COBB-VANTRESS, INC.**

R. Thomas Lay
Kerr, Irvine, Rhodes & Ables
201 Robert S. Kerr Ave., Suite 600
Oklahoma City, OK 73102
COUNSEL FOR WILLOW BROOK FOODS, INC.

John H. Tucker
Theresa Noble Hill
Rhodes, Hieronymus, Jones, Tucker & Gable
P. O. Box 21100
Tulsa, OK 74121-1100
**COUNSEL FOR CARGILL, INC. AND CARGILL
TURKEY PRODUCTION, LLC**

I also hereby certify that I served the attached documents by United States Postal Service, proper postage paid, on the following who are not registered participants of the ECF System:

Elizabeth C. Ward
Frederick C. Baker
Motley Rice LLC
28 Bridgeside Blvd.
Mount Pleasant, SC 29464
and
William H. Narwold
Motley Rice LLC
20 Church St., 17th Floor
Hartford, CT 06103
and

C. Miles Tolbert
Secretary of the Enviroment
State of Oklahoma
3800 North Classen
Oklahoma City, OK 73118

COUNSEL FOR PLAINTIFFS

s/ A. Scott McDaniel